IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.806 OF 2004
IN
NOTICE OF MOTION NO.3422 OF 2002
IN
SUMMARY SUIT NO.3511 OF 2001

M/s.Vikasco Rubber Products (India)
& anr. .. Appellants

v/s.

Sun Pharmaceuticals Industries
& ors. .. Respondents

Mr.R.M.Kadam i/by Mr.R.G.Singh for appellants.

Mr.M.P.S.Rao i/by M/s.Sanjay Udeshi & Co. for respondent No.1.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 22nd December, 2004

P.C.

Heard the learned counsel for the appellants

and the learned counsel for respondent No.1.

2. Admit.

3. The advocate for respondent No.1 waives

service. Respondent Nos.2 to 4 are not necessary

parties for the purposes of this appeal.

4. The appeal is treated on board for hearing.

5. The respondent No.1 (original plaintiff) in the summary suit has prayed for following relief:-

> (a) That this Hon'ble Court may please to pass an order and decree against the Defendants jointly and/or severally directing the Defendants to pay to the Plaintiff a sum of Rs.9,.23,75,855.00 as more particularly stated in the particulars of claim alongwith interest at the rate of 45% per annum on Rs.1,81,68,958.00 till the payment or actual realisation thereof.

6. In the light of the relief claimed in the suit, we are afraid, the ad-interim order granted by the learned motion Judge in terms of prayer (d) of the notice of motion cannot be sustained. By prayer (d), the respondent No.1 herein (original plaintiff) prayed for an order of temporary injunction restraining the present appellants (original defendant Nos.1 and 2) from transferring, alienating, encumbering, parting with, creating third party rights of any nature or otherwise adversely dealing with the assets and properties set out in the schedule annexed to the notice of motion. In the summary suit for recovery of money, no such relief could have been granted by way of an ad-interim order. The learned counsel for the plaintiff submits that in the notice of motion, the plaintiff has also prayed for attachment before judgment. He also submits that the plaintiff

desired to amend the plaint.

7. In the light of the submissions of the parties,

we dispose of the appeal by following order:-

(i) The ad-interim order in terms of prayer (d) of the notice of motion is set aside.

(ii) The plaintiff shall be at liberty to apply for ad-interim order in the pending notice of motion as and when the plaint is amended.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)